

Aaron Drain #1193342
Name
High Desert State Prison
P.O. box 650
Indian Springs, NV 89010
Prison Number

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Aaron Russel Drain,
Plaintiff,
vs.
Calvin Johnson,
James Scally,
Officer Tracy,
Daeshawn Williams,
Wilson Bernales.
Defendant(s).
)

CASE NO. 2:22-cv-00924-CDS-DJA
(To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

Jury Trial Demanded

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, Aaron Drain,
(Print Plaintiff's name)
who presently resides at High Desert State Prison, were
violated by the actions of the below named individuals which were directed against
Plaintiff at High Desert State Prison on the following dates
(institution/city where violation occurred)

9/21/21, 9/21/21-10/10/21, and 12/28/21- 2/16/22.
(Count I) (Count II) (Count III)

Make a copy of this page to provide the below information if you are naming more than five (5) defendants

2) Defendant Calvin Johnson resides at P.O. box 650 Indian Springs, NV 89070
 (full name of first defendant) (address if first defendant)
 and is employed as Warden. This defendant is sued in his/her
 individual official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Violated my 8th and 14th Amendment
right secured by acts of congress

3) Defendant James Scally resides at P.O. box 650 Indian Springs, NV 89070
 (full name of first defendant) (address if first defendant)
 and is employed as Assistant Warden. This defendant is sued in his/her
 individual official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Violated my 8th and 14th Amendment
right secured by acts of congress

4) Defendant Senior Officer Tracy resides at P.O. box 650 Indian Springs, NV 89070
 (full name of first defendant) (address if first defendant)
 and is employed as Senior Officer. This defendant is sued in his/her
 individual official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Violated 8th and 14th Amendment
right secured by acts of congress

5) Defendant Daveshawn Williams resides at P.O. box 650 Indian Springs, NV 89070
 (full name of first defendant) (address if first defendant)
 and is employed as Search & Escort officer. This defendant is sued in his/her
 individual official capacity. (Check one or both). Explain how this defendant was
 acting

under color of law: Violated 8th and 14th Amendment
right secured by acts of congress

6) Defendant Wilson Bernales resides at P.O. box 650 Indian Springs, NV 89070
(full name of first defendant) (address if first defendant)
and is employed as Medical provider. This defendant is sued in his/her
(defendant's position and title, if any)
 individual official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: Violated 8th and 14th amendment right
Searched by acts of congress

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

NYA

B. NATURE OF THE CASE

- 1) Briefly state the background of your case.

On 9-21-21 was in pain and I requested medical because I was in such pain I was about to pass out, due to the surgery I had a few days prior and was not receiving any pain medicine, not only did the floor officers refuse to call medical, one of the defendants pepper sprayed me for no reason. After that incident I was taken to segregation where I was denied wound care, and contracted an infection, and was also denied my second surgery which exacerbated the initial injury.

C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated:

8th Amendment
and 14th Amendment right

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On 9-21-21 Senior Officer Tracy was the floor officer in unit 5%b. I recently had surgery on the tendon on my right thumb, and at the time was not receiving any pain medication at all. I was in such pain that I felt as if I were going to pass out. I asked Tracy to contact Medical, and he simply refused to do so. Tracy violated my 8th Amendment right to receive medical care by being deliberately indifferent to my medical needs by acting as "gate-keeper" and not allowing me access to medical although I was going to pass out. Instead of contacting medical he contacted Search and Escort Officer Daeshawn Williams who also violated my 8th Amendment right by using malice force by pepper spraying me in the face twice for no reason.

COUNT II

The following civil rights has been violated:

8th Amendment
and 14th amendment

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

From the dates of 9-21-21 to 10-10-21 I was denied adequate medical care because after my Surgery, I had not received any wound care although the orthopedic surgeon ordered wound care and a 2-week follow up to have my stitches removed. The Orthopedic Surgeon sent follow up notes, and post operative care instructions to the HOSP M.D. Wilson Bernales I never received wound care, and my sutures were not removed in a timely manner which caused extreme pain. Since I had not received any wound care I contracted an infection and I had to be admitted to the infirmary at the institution. Since the Orthopedic Surgeon sent follow-up notes to the prison, and since multiple officer's along with myself notified medical and Dr. Bernales before hand, he had prior knowledge. He was deliberately indifferent to my medical needs.

COUNT III

The following civil rights has been violated:

8th Amendment
and 14th Amendment

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On December 28, 2021 my mother contacted the Institution due to my complaints of pain being ignored. On 12-28-21 she was able to speak with Dr. Wilson Bernales who told my mother he did not want to schedule my appointment because I might "escape" and also said there was no K-wire placed in my hand, which at that point was protruding through my right thumb. Dr. Wilson Bernales examined my hand and said that he would schedule an x-ray. Dr. Bernales delayed having the x-ray done from 12-28-21 to 2-9-21 which resulted in severe pain, this delay also further exacerbated my injury ultimately resulting in permanent damage. Once the K-wire was removed on a later date. This was deliberate indifference.

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

- 1) Have you filed other actions in state or federal courts involving the same or similar facts as involved in this action? Yes No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

outline).

- a) Defendants: N/A
- b) Name of court and docket number: N/A
- c) Disposition (for example, was the case dismissed , appealed or is it still pending?):
- d) Issues raised:
- e) Approximate date it was filed:
- f) Approximate date of disposition:

- 2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**

Yes No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: .
- b) Name of court and case number: .
- c) The case was dismissed because it was found to be (check one): frivolous
 malicious or failed to state a claim upon which relief could be granted.
- d) Issues raised:
- e) Approximate date it was filed:
- f) Approximate date of disposition:

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: .
- b) Name of court and case number: .

- c) The case was dismissed because it was found to be (check one): _____ frivolous
_____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____.
- b) Name of court and case number: _____.
- c) The case was dismissed because it was found to be (check one): _____ frivolous
_____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? Yes _____ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) _____ disciplinary hearing; (2) _____ state or federal court decision; (3) _____ state or federal law or regulation; (4) _____ parole board decision; or (5) _____ other _____.
If your answer is "Yes", provide the following information. Grievance Number 2006-31-29356
Date and institution where grievance was filed 9-26-21/12-8-21/2-15-22

Response to grievance: "DO NOT Re-submit claims involving personal injury shall not exceed \$00.00 per AR-740"

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

~~\$ 100,000.00~~ COMPENSATORY damages
~~\$ 100,000.00~~ Punitive damages
~~Injunctive Relief~~

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Aaron Dream

(Name of Person who prepared or helped prepare this complaint if not Plaintiff)

Aaron Dream

(Signature of Plaintiff)

6-8-22

(Date)

(Additional space if needed; identify what is being continued)
